

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:05CV271-3-MU

MELANIE S. ANDERSON,

Petitioner,

v.

WARDEN OF N.C. STATE PRISON

Respondent.

ORDER

THIS MATTER is before the Court upon Petitioner's Petition for a Writ of Habeas Corpus, initially filed October, 2005 in the Eastern District of North Carolina, transferred by Order dated October 21, 2005 to this Court, and entered on the docket on November 1, 2005 (Document No. 4). For the reasons stated herein, the Petitioner's Motion to Vacate will be dismissed.

In reviewing the record, the Court notes that Petitioner filed a previous Petition for Writ of Habeas Corpus (case number 5:05cv255-2-MU) on September 26, 2005, which was denied by this Court on December 5, 2005, on a motion for Reconsideration.¹

"Before a second or successive application [for habeas corpus] is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the

¹ The Court initially denied the Petition due to Petitioner's failure to respond to the Hill v. Braxton, 277 F.3d 701 (4th Cir. 2002) Order. However, after the Order dismissing the case for failure to respond to the Hill Order was issued, the Court became aware that Petitioner had, in fact, timely responded to the Hill Order, but because of a clerical error, the Court was not made aware of the Petitioner's response until after it issued an Order dismissing the case. The Court then considered Petitioner's response as a Motion for Reconsideration and determined that Petitioner's Petition for a Writ of Habeas Corpus was untimely and Petitioner had not presented sufficient causes to equitably toll the deadline.

district court to consider the application.” 28 U.S.C. § 2244 (b)(3)(A). Thus, this Court may not consider the merits of Petitioner’s claims because she failed to first certify her motion with the Fourth Circuit Court of Appeals before filing it in the District Court.²

THEREFORE, IT IS HEREBY ORDERED that Petitioner’s Petition for a Writ of Habeas Corpus is **DISMISSED**.

² Moreover, the Court notes that since it concluded that Petitioner’s prior petition (5:05cv255) was untimely, clearly this Petition, initially filed in the Eastern District of North Carolina in October 2005 and transferred to this Court on November 1, 2005, would also be untimely.

Signed: December 6, 2005

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

